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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/690,927	10/22/2003	C. Norman Shealy	079069-0119	6899

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EXAMINER

ROGERS, JAMES WILLIAM

ART UNIT	PAPER NUMBER
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1618

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	12/27/2006	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No. 10/690,927	Applicant(s) SHEALY, C. NORMAN	
	Examiner James W. Rogers, Ph.D.	Art Unit 1618	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>10/22/2003</u> . | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4,6-10,14-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Cantin et al. (US 5,922,764).

Cantin teaches a stable gelled composition with high electrolyte content, the composition is useful for treating the skin, scalp, hair, mucous membranes and/or nails. See abstract. The composition comprises by weight 0.1-10% of the gelling agent cetylhydroxyethyl cellulose, 0.5 to 40% of an electrolyte including magnesium chloride, 20 to 99.4 % water and the composition can further comprise 0.01 to 20% of an adjuvant including glycerin. See col 3 lin 7-65, col 4 lin 53-60, col 5 lin 59-col 6 lin 6 and claims 1-7,9-10 and 18. Regarding the limitation that the method of applying the magnesium containing composition lowers DHEA levels in an individual, it is the position of the examiner that where the claimed and prior art products are identical or substantially identical in structure or composition, or are produced by identical or substantially identical processes, a prima facie case of either anticipation or obviousness has been established, Thus the claiming of a new use, new function or unknown property which is inherently present in the prior art does not necessarily make the claim

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patentable. In the instant case applicants are claiming a new use, property or function of a composition already known in the prior art and is therefore applicants claimed invention is not patentably distinct from the Cantin reference. Regarding the limitations that the composition is essentially free of sodium and sulfate ions this limitation is met because the Cantin patent does not mention the use of sodium ion in the composition and sulfate ions could be selected as the anion for the electrolyte but numerous electrolytes could be selected besides those electrolytes with sulfate as the anion (including chloride, borate, nitrate ect.). Regarding the limitations that composition further comprises an additive selected from soaps, perfumes and dyes Cantin teaches the use of other actives in the composition selected from perfuming alcoholic solutions including perfumes, colorants, pigments and surfactants.

Claim Rejections - 35 USC § 103

Claims 1-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cantin et al. (US 5,922,764) in view of Alban et al. (US 5,420,118).

Cantin is disclosed above. Cantin while disclosing the use of a cellulose gelling agent within applicants claimed range does not disclose the use of the specific gelling agent methyl cellulose.

Alban discloses skin care compositions in the form of oil-free aqueous gels and is used primarily for the disclosure within that methylcellulose was well known at the time of the invention to be useful as a gelling agent in gels for topical application. See abstract and col 3 lin 25-40.

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It would have been prime facie obvious at the time of the invention to a person of ordinary skill in the art to modify the composition disclosed in Cantin and add the methylcellulose gelling agent disclosed within Alban. It is generally considered to be prime facie obvious to combine or exchange compounds each of which is taught by the prior art to be useful for the same purpose in order to form a composition that is to be used for an identical purpose. The motivation for combining them flows from their having been used individually in the prior art, and from them being recognized in the prior art as useful for the same purpose. As shown by the recited teachings, the instant claims are no more than gel compositions for the skin containing conventional gelling agents and one of ordinary skill in the art would see from the disclosures of Cantin and Alban that the gelling agents cetylhydroxyethyl cellulose and methyl cellulose are interchangeable with one another. It therefore follows that the instant claims define prime facie obvious subject matter.

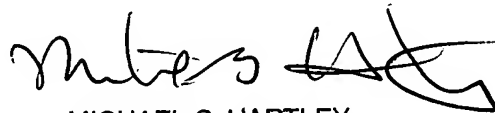
Conclusion

No claims are allowed. Any inquiry concerning this communication or earlier communications from the examiner should be directed to James W. Rogers, Ph.D. whose telephone number is (571) 272-7838. The examiner can normally be reached on 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mike Hartley can be reached on (571) 272-0616. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'mhartley', followed by a stylized flourish or checkmark.

MICHAEL G. HARTLEY
SUPERVISORY PATENT EXAMINER